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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW LINUS GEE,

Defendant and Appellant.

C061811

(Super.Ct.No.  
CRF081209)

After inviting the victim to interview for a job, defendant Matthew Linus Gee asked her to cash a check for him. She agreed to do so. The check, in the amount of \$450, was drawn on defendant's account at US Bank. Defendant and the victim went to a Wells Fargo bank where the victim had an account, and she cashed the check there. Defendant gave the victim \$50 and kept the rest. Defendant later admitted there was no money in his account when he wrote the check. Indeed, the account had been closed over a month earlier.

Defendant pled guilty to delivering a check with insufficient funds (Pen. Code, § 476a, subd. (a)). Among his prior convictions

were five felonies for counterfeit checks. Probation was denied, and defendant was sentenced to prison for the upper term of three years.

Defendant appeals, but did not obtain a certificate of probable cause (Pen. Code, § 1237.5). We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

#### DISCUSSION

Pursuant to this court's miscellaneous order No. 2010-002, filed March 16, 2010, we deem defendant to have raised the issue (without requesting supplemental briefing) of whether amendments to Penal Code section 4019, effective January 25, 2010, apply retroactively to his appeal and entitle him to more presentence credits.

For the reasons stated in *People v. Brown* (Mar. 16, 2010, C056510) \_\_\_ Cal.App.4th \_\_\_, we conclude that the amendments apply to all appeals pending as of January 25, 2010, including defendant's appeal.

Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b)(2) and (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, having

served 46 actual days of presentence custody, defendant is entitled to 46 days of conduct credits.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is modified to specify custody credits as follows: 46 actual days of custody and 46 days of conduct credit, for a total of 92 days of presentence custody credit. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment accordingly and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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SCOTLAND, P. J.

We concur:

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SIMS, J.

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ROBIE, J.